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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-152
Telemessaging, Electronic	)	
Publishing, and Alarm	)	
Monitoring Service	)	
	)	
To: The Commission	)	

COMMENTS OF THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

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SUMMARY

The Alarm Industry Communications Committee ("AICC") and its members are vitally affected by the Commission's actions in implementing and enforcing Section 275 (alarm monitoring services) of the Telecommunications Act of 1996. AICC and the alarm industry have spent countless hours during the past several years working with Congress and other interested parties in an effort to ensure that legislation revamping the telecommunications landscape was fair and balanced as it affects the alarm monitoring business. With the passage of Section 275, the alarm industry believed that result had been accomplished.

Section 275 seems on its face to be simple and straightforward. Section 275(a)(1) is a single, declarative sentence.

> PROHIBITION—No Bell operating company or affiliate thereof shall engage in the provision of alarm monitoring services before the date which is 5 years after the date of enactment of the Telecommunications Act of 1996.

"Alarm monitoring service" is defined in Section 275(e) as a service that uses a device located in one location to receive signals from other devices at that location concerning an emergency situation and to transmit signals regarding such threat to a remote monitoring center to alert personnel about the emergency. Since the five-year ban extends beyond the expiration of the separate affiliate and related safeguards created by the 1996 Act for in-region interLATA services, no such safeguards were enacted for alarm services.

Section 275(a)(2) seems similarly easy to understand. It exempts from the 5-year prohibition of Section 275(a)(1) any BOC providing alarm services as of November 30, 1995. This was widely understood to include only Ameritech. Section 275(a)(2) limits its exception, however, by forbidding Ameritech from growth by acquisition. It does so by banning Ameritech from obtaining any "equity interest in" or "financial control of" any unaffiliated alarm company during the five-year moratorium. This approach allows Ameritech to retain and grow its existing business during the five-year prohibition without permitting it to use the time as a five-year head start on the other BOCs during which Ameritech could buy numerous other alarm companies and become dominant. (It already is the nation's second largest.)

On February 8, 1996, the day the 1996 Act was signed, these matters seemed clear and simple. In the past few months, however, Section 275 has been under assault by a barrage of attempts to interpret it out of existence.

First, Southwestern Bell Telephone ("SWBT") asked the Common Carrier Bureau to approve a CEI Plan for an arrangement where SWBT would (1) market alarm CPE and alarm monitoring services as a packaged offering, (2) provide the sale and exclusive customer contact during the sales process, (3) bill for those services on the local telephone bill in a lump sum with other items provided by SWBT, (4) provide customer inquiry functions in connection with its billing and marketing, and (5) share in the revenues of the underlying alarm monitoring service by receiving compensation as a percentage of revenues.

This arrangement effectively makes SWBT a reseller of alarm monitoring services and creates all the incentives and opportunities for discrimination which the five-year moratorium was meant to prevent. SWBT maintains, however, that Section 275 is intended only to preclude it from operating an alarm monitoring center, not from participating in the alarm monitoring business. If the "provision of" language in the Section 275 moratorium is read to preclude only actual operation of an alarm monitoring center, and otherwise to allow participation as proposed by SWBT, Section 275(a)(1) is a nullity.

Second, Ameritech now maintains that the prohibition in Section 275(a)(2) precludes it from purchasing a stock or partnership interest in an unaffiliated alarm monitoring business but allows it to purchase all the assets of such a company. In effect, Ameritech reads the "equity interest in" or "financial control of" language of Section 275(a)(2) to be nothing more than a congressional directive concerning the legal form of its acquisitions. Stock and partnership interests may not be purchased, but asset acquisitions are permitted. Again, if allowed to stand, this interpretation of Section 275(a)(2) will render it meaningless.

Third, U S West now contends that it too is grandfathered under Section 275(a)(2). Because it offers two services used by alarm monitoring companies as part of their services, U S West claims it was in the alarm monitoring business as of November 30, 1995. While U S West's services may be "enhanced", and thus in need of

CEI approval, they clearly are not "alarm monitoring services" under Section 275(e). In short, U S West is not grandfathered by Section 275(a)(2).

These raw attempts to undo the intended effect of Section 275, only six months into the five-year prohibition, provide compelling evidence that the FCC needs to draw bright lines in interpreting Section 275 and to be forceful in their enforcement. The Commission thus should adopt the following rulings in this proceeding:

- "[E]ngag[ing] in the provision of alarm monitoring services" includes resale, sales or marketing of alarm monitoring services, or any form of revenue sharing with an alarm monitoring provider, either individually or collectively;

- Obtaining an "equity interest in" or "financial control of" an alarm monitoring provider includes all forms of acquisition, whether structured as a stock, partnership or asset purchase; and

- U S West was not engaged in the provision of alarm monitoring services on November 30, 1995 and is not grandfathered by Section 275(a)(2).

And to deter future attempts at undermining Section 275, the Commission also should adopt the following enforcement policies:

- A *prima facie* case is one which, if true, states a claim;

- Once a *prima facie* case is made, the burden of proof shifts to the defendant, and no presumption of reasonableness is present; and

- "Material financial harm" need not be quantifiable and includes, *per se*, any unreasonable discrimination or denial of service.

Finally, the Commission also should make clear that its powers under Section 275 cover both interstate and intrastate alarm monitoring services. The plain language of the Act, as well as the common sense reading of the legislative scheme, lead inevitably to that conclusion. To limit the FCC's authority solely to interstate alarm services would be to eviscerate Section 275.

The Commission should take quick and decisive action on all these matters. Experience in the brief time since passage of the 1996 Act makes clear that, if such action is not taken now, Section 275 will quickly become the source of endless disputes requiring Commission attention and adjudication.

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COMMENTS OF THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

The Alarm Industry Communications Committee ("AICC"), by its attorneys, respectfully submits these comments in response to the Commission's *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[1] AICC's comments are limited in scope to those sections of the *NPRM* that address alarm monitoring service, including portions thereof that address the Commission's authority under and enforcement of Section 275. AICC is in agreement with the majority of the tentative conclusions expressed in the *NPRM*, and supports the Commission's efforts to implement the provisions of Section 275 in a way that is true to Congress' intent.

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[1] *Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing, and Alarm Monitoring*, CC Docket No. 96-152, *Notice of Proposed Rulemaking*, FCC 96-310 (rel. Jul. 18, 1996)("*NPRM*").

INTRODUCTION

AICC is a subcommittee of the Central Station Alarm Association. Its mission is to represent the interests of alarm monitoring service providers before the FCC, other regulatory agencies and Congress on issues that affect the means of communication available to provide alarm monitoring services.

AICC members include ADT Security Systems, Inc.; Holmes Protection Group; Honeywell Protection Services; the National Burglar and Fire Alarm Association; Rollins, Inc.; Wells Fargo Alarm Services; the Security Industry Association and Security Network of America. AICC members represent the overwhelming majority of the alarm security services provided in the United States. AICC members are highly dependent on the BOCs for essential services and interconnection to local exchange facilities, and have participated extensively over the years in Commission proceedings affecting the provision of alarm monitoring services.

I. Scope of the Commission's Authority (¶¶ 26-27)

The Telecommunications Act of 1996 ("1996 Act" or the "Act")[2] "fundamentally changes telecommunications regulation."[3] In so doing, the Act "forges a new partnership

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[2] Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified as 47 U.S.C. §§ 151 et seq.).

[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, FCC 96-325, ¶ 1 (rel. Aug. 8, 1996)("*Interconnection Order*").

between state and federal regulators," assigning "complimentary and significant" roles for each in all aspects of telecommunications services.[4] Thus, in several different proceedings, the Commission has concluded that the Act gives it authority over a variety of matters without regard to traditional jurisdictional concepts. For example, in Docket No. 96-98, the Commission concluded that its authority pursuant to Sections 251 and 252 extends to both interstate and intrastate aspects of interconnection.[5] Similarly, in its *BOC In-Region NPRM*, the Commission reached the tentative conclusion that its authority pursuant to Sections 271 and 272 extends to both interstate and intrastate interLATA services.[6] Likewise, because Section 275 is inextricably linked to this new jurisdictional landscape, the Commission should reach a similar conclusion here.

A. The Plain Language of Section 275 Gives the Commission Jurisdiction Over Both Interstate and Intrastate Alarm Monitoring Service (¶ 26)

The Commission's interpretation should, of course, begin with the language of Section 275. The plain language of that section indicates that Congress did not intend to address alarm monitoring through the use of traditional interstate and intrastate service

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[4] *Id.* at ¶¶ 2, 111.

[5] *Id.* at ¶ 83 (the Act is "designed to open telecommunications markets to all potential service providers, without distinction between interstate and intrastate services").

[6] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, CC Docket No. 96-149, *Notice of Proposed Rulemaking*, FCC 96-308, ¶ 25 (rel. July 18, 1996)("*BOC In-Region NPRM*").

classifications. In setting forth the definition of "alarm monitoring service" in Section 275(e), Congress made no reference to the interstate or intrastate provisioning of such services.[7] In fact, nowhere in Section 275 did Congress use these words—or any others—that limit, or could be construed to limit, the Commission's authority over alarm monitoring services. Moreover, Section 275(c) gives the Commission authority to resolve all disputes arising under Section 275 and provides no role for state commissions to resolve allegedly intrastate disputes. The only conclusion consistent with this wording is that the Commission has jurisdiction over all alarm monitoring services, regardless of whether the service involves a component that is interstate or intrastate in nature.

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[7] Section 275(e) provides:

> DEFINITION OF ALARM MONITORING SERVICE.—The term "alarm monitoring service" means a service that uses a device located at a residence, place of business, or other fixed premises—
>
> (1) to receive signals from other devices located at or about such premises regarding a possible threat at such premises to life, safety, or property from burglary, fire, vandalism, bodily injury, or other emergency, and
>
> (2) to transmit a signal regarding such threat by means of transmission facilities of a local exchange carrier or one of its affiliates to a remote monitoring center to alert a person at such center of the need to inform the customer or another person or police, fire, rescue, security, or public safety personnel of such threat, but does not include a service that uses a medical monitoring device attached to an individual for the automatic surveillance of an ongoing medical condition.

47 U.S.C. § 275(e).

B. The 1996 Act Displaces the Traditional Jurisdictional Divide Between Interstate and Intrastate Services (¶ 26)

Those who have benefitted from the old regulatory regime surely will contend that the bifurcated jurisdiction of the past should continue, despite Section 275's language. In enacting the 1996 Act, however, Congress carefully crafted a plan intended to restructure dramatically the telecommunications industry and the way in which the federal and state governments regulate it. Charged with the huge responsibility of implementing the provisions of the new Act, the Commission will oversee both the dismantling of local monopoly regulation as well as the cessation of MFJ-imposed restrictions on the BOCs. In short, it is safe to say that Congress did not intend for things to stay the same.

So too is the case with the traditional concept of shared regulation between the FCC and state PUCs. Recognizing that Congress did not craft its new regulatory framework around the traditional jurisdictional allocation of interstate telecommunications oversight to the FCC and intrastate telecommunications regulation to the state PUCs, the Commission already has concluded that Sections 251 and 252 give it jurisdiction over both interstate and intrastate aspects of interconnection, thereby supplanting the traditional interstate/intrastate jurisdictional divide.[8] As the Commission explained in its recent *Interconnection Order*, the

[8] *Interconnection Order* at ¶¶ 83-84.

Act creates a new regulatory framework "designed to open telecommunications markets to all potential service providers, without distinction between interstate and intrastate services."[9]

Similarly, the Commission, in its *BOC In-Region NPRM*, reached the tentative conclusion that its authority pursuant to Sections 271 and 272 extends to both interstate and intrastate interLATA services.[10] Section 275 also is part of the new jurisdictional landscape created by the 1996 Act. It should be interpreted consistent with the intent of this landmark legislation, which is designed to create the foundation upon which local competition can develop.

In furtherance of and in conjunction with the interconnection and unbundling goals of Sections 251 and 252, Section 271 makes BOC entry into a number of non-local telecommunications markets contingent on their taking meaningful steps to allow local competition to develop. Accordingly, for interLATA services, Congress allowed for entry only upon a BOC's satisfaction of the Section 271 checklist.[11] However, because competition would be in its infancy, Congress, in Section 272, also mandated structural safeguards that require the BOCs to create separate affiliates for the provision of interLATA services for three years after entry into the interLATA market.[12]

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[9] *Id.* at ¶ 83.

[10] *BOC In-Region NPRM* at ¶ 25.

[11] 47 U.S.C. § 271(c)(2).

[12] *Id.* at § 272(a).

For alarm monitoring services, Congress took into account the unique vulnerability of the alarm monitoring industry to BOC discrimination as a result of its dependence on BOC bottleneck facilities. Building upon the framework of Sections 251-52 and 271-72, Congress concluded a stronger approach was necessary for alarm monitoring than for other types of telecommunications services. Thus, rather than allowing early BOC entry into the alarm monitoring business subject to structural safeguards or other restrictions, Congress opted to establish, in Section 275, a complete prohibition on BOC entry for a period of five years. Congress deemed this period necessary to allow the fundamental changes brought on by Section 251-52 to develop sufficiently so that alarm monitoring service providers would no longer be dependent on a single company for local transport—and to ensure that the incentives for BOCs to discriminate against formerly captive alarm monitoring service providers had diminished accordingly.[13]

Thus, the Act creates a single integrated scheme for BOC entry into businesses beyond their core local exchange services. To ensure that Congress' goals are realized, the Commission already has concluded that Sections 251 and 252 give it authority over both the interstate and intrastate aspects of interconnection.[14] It tentatively has reached a similar conclusion with respect to BOC entry into interLATA markets within their own service

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[13] Because the alarm monitoring restriction is scheduled to last longer than the interLATA structural separation requirement (5 years vs. 3 years), there was no need to make alarm monitoring subject to the separate subsidiary requirement. *See* 47 U.S.C. § 271(g).

[14] *Interconnection Order* at ¶¶ 83-84.

regions, as governed by Sections 271 and 272.[15] Now, for the reasons stated above, the Commission must make the same conclusion with respect to Section 275.

C. Interpreting Section 275 in a Way That Limits Its Applicability to Interstate Alarm Monitoring Services Renders It Moot (¶ 26-27)

In addition to being inconsistent with the broader regulatory framework and the plain statutory language, interpreting Section 275 so that its applicability, and the Commission's authority, is limited to interstate alarm monitoring services effectively would nullify the section itself. Obviously, in carrying out its obligation to implement the provisions of the 1996 Act, the Commission may not interpret the statute, or any part thereof, in a manner that renders it moot. Section 275 has no meaning unless it applies to both interstate and intrastate alarm monitoring services.

Alarm monitoring service is not inherently interstate or intrastate in nature.[16] Rather, only one component—the associated transport provided by LECs—even relates to traditional jurisdictional classifications. That component -- while essential to an alarm monitoring providers' ability to offer service -- does not make a meaningful difference to most consumers. That is, consumers want monitored premises, regardless of where the response center is located.

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[15] *BOC In-Region NPRM* at ¶ 25.

[16] The definition of "alarm monitoring service" contained in Section 275(e) confirms this viewpoint.

Thus, if the Commission were to adopt the view that Section 275 was limited to interstate alarm monitoring services, a BOC easily could avoid the restrictions of that section. If the restrictions of Section 275 are limited to the interstate sphere, BOCs simply will locate alarm monitoring centers and direct traffic in a way that avoids crossing state boundaries, thereby avoiding the interstate restriction. Thus, BOCs would be able to enter the alarm monitoring business in any state, including those "in-region" where they possess the market power that prompted Congress to enact this section, where they are willing to establish a central station. Surely, Congress did not enact Section 275 simply to spur central station construction. Rather, the section was intended to address the special situation created by alarm monitoring service providers' dependence on the BOCs' bottleneck services, regardless of where a BOC locates its central stations.

This, of course, runs directly counter to the congressional concerns over BOC market power abuse underlying the alarm monitoring provisions of the Act.[17] Limiting the applicability of Section 275 to interstate services would lead to the anomalous result that a BOC would be prohibited from providing alarm monitoring services outside its regions

[17] Wary of the incentives for discrimination that would arise from a BOC's provision of alarm monitoring service in competition with companies captive to and dependent on them for associated local transport service, Congress established, in Section 275, a five year moratorium on BOC entry into the alarm monitoring business so that local competition could develop and, in turn, alarm monitoring service providers would no longer be held captive to the bottleneck control of local exchange service monopolists. *See* H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 87 (1995)("*House Report*"); S. Rep. No. 104-450, 104th Cong., 2d Sess. 157 (1996).

(where it most likely would provide service on an interstate basis), but would be free to offer service in its traditional service regions, where competing alarm monitoring service providers are captive to the BOCs.

In short, limiting the applicability of Section 275 to interstate alarm monitoring services reduces that section to nothing more than an invitation to BOCs seeking to enter the alarm monitoring business to construct central station facilities in every state in which they intend to do business.[18] To argue that this is consistent with Congress' intent would be patently absurd.

D. Section 275 Applies to Both IntraLATA and InterLATA Alarm Monitoring Services (¶ 73)

The same reasons that support the application of Section 275 to both interstate and intrastate services also lead to the conclusion that the section applies to both interLATA and intraLATA alarm monitoring.[19] Nothing in the language of Section 275 makes the location of the originating or terminating points of an alarm transmission relevant for jurisdictional purposes. In short, alarm monitoring services may involve interstate, intrastate, interLATA,

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[18] Should the FCC disagree with this conclusion, and determine that it does not have jurisdiction over intrastate alarm monitoring services, it still will have the authority, under *Louisiana Public Service Commission,* to preempt state regulation that is inconsistent with or contrary to the federal policy set forth by Congress in Section 275. *Louisiana Public Service Commission*, 476 U.S. 355, 375 n.4 (1986).

[19] *NPRM* at ¶ 73.

or intraLATA transmission and still meet the definition in Section 275. Any other conclusion simply would lead to a game in which BOCs would locate central station facilities within each LATA in order to avoid the strictures of Section 275. Again, it is absurd to suggest that Congress intended for Section 275 to accomplish nothing more than to dictate the geographic location of alarm central station facilities.

II. Alarm Monitoring Service (¶¶ 68-74)

A. Alarm Monitoring Service is an Information Service Distinct from the Provision of Underlying Transport Services or Enhanced Services Used as a Complement to or In Place of Such Services (¶ 69)

AICC agrees with the Commission's conclusion that alarm monitoring service as defined in section 275(e) falls within the definition of "information service" in Section 3(20) of the Act.[20] However, AICC also notes that the reverse is not necessarily true. Thus, although AICC concurs in the Commission's opinion that "the provision of underlying basic tariff telecommunications services alone, without an enhanced or information component,

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[20] Section 3(20) of the Act provides:

> INFORMATION SERVICE.—The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making information available via telecommunications, and includes electronic publishing, but does not include any use of such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

47 U.S.C. § 153(20).

does not fall within the definition of alarm monitoring service under section 275(e)",[21] it notes that adding an enhanced or information component to or in place of underlying transport services does not in and of itself bring the service within the definition of alarm monitoring service.

The examples provided by the Commission in the *NPRM* illustrate this point.[22] ScanAlert service provided by Ameritech and Scan Alert provided by U S West are similar services that are used by alarm monitoring service providers as a component of the alarm monitoring service. Although both services perform scanning and routing functions like standard central office equipment,[23] AICC believes, based on previous Bureau decisions, that both can be characterized as *enhanced* telecommunications services.[24]

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[21] *NPRM* at ¶ 69.

[22] *Id.*

[23] "Standard central office equipment scans CPE-generated signals which alert the network that a subscriber is ready or is not ready to use the network to send a message (*i.e.*, off-hook or on-hook status)." *Applied Spectrum Technologies, Inc.*, 58 RR 2d 881, 886 (CCB 1985).

[24] Ameritech's service appears to be identical or at least similar to spread spectrum services characterized as enhanced in two previous Common Carrier Bureau decisions. *Applied Spectrum Technologies, Inc.*, 58 R.R. 2d 881 (CCB 1985)("*Applied Spectrum*"); *Mountain States Tel. & Tel. Co.*, 1986 WL 291403 (CCB 1986)(U S West provides Versanet service pursuant to a waiver granted in this case). In *Applied Spectrum*, the Bureau considered a spread spectrum alarm service, and found that, although the scanning and routing functions performed by central office equipment employed was similar to that performed by standard central office equipment—the former monitors alarm monitoring equipment-generated signals and the latter monitors CPE-generated signals, the purpose of the alarm scanning function was fundamentally different from the traditional scanning that is

(continued...)

The fact that they are enhanced services, however, does not make them alarm monitoring services under the definition set forth in Section 275(e). This definition clearly contemplates that "alarm monitoring service" includes the provision of monitoring equipment at the customer's premises for the detection of a possible threat at such premises to life, safety or property.[25] To simply connect to equipment actually capable of monitoring and indicating possible threats does not by itself satisfy the definition of alarm monitoring service or trigger the provisions of Section 275. Thus, enhanced transmission services, like ScanAlert, are not "alarm monitoring services" within the meaning of Section 275—regardless of their technological sophistication.

B. Ameritech Is the Only BOC That Provides Alarm Monitoring Service as Defined in Section 275(e) (¶ 70)

AICC concurs in the Commission's conclusion that Ameritech is the only BOC proving alarm monitoring services that qualify for grandfathering under Section 275(a)(2).[26]

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[24](...continued)
used to determine on-hook and off-hook status and thus, the service should be classified as enhanced. *Applied Spectrum* at 886. Since this analysis clearly is applicable to U S West's Scan Alert service, despite the use of different technology that does not necessitate code and protocol conversion, AICC submits that it too may be characterized as an enhanced service. *See Id.* (although the Bureau stated that its conclusion that the service was properly classified as enhanced was reinforced by the code and protocol conversions required by the spread spectrum technology employed, this factor was not determinative).

[25] *Id.*

[26] *See Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, 10 FCC Rcd 13758, 13770 (1995)(approving Ameritech's CEI plan for "SecurityLink" service)("*BOC CEI Plan Approval Order*").

As described in the *NPRM*, Ameritech, through its SecurityLink unit and pursuant to a CEI plan on file with the Commission, provides an alarm monitoring service directly to end-user customers that includes the sale, installation, monitoring and maintenance of monitoring and control systems for end-users.[27] For the sake of clarity, AICC reiterates its position, described above, that Ameritech's ScanAlert service is a transmission service that does not comport with the definition of "alarm monitoring service" provided in Section 275(e) and, as a result, is unaffected by the provisions of Section 275.

AICC also agrees with the Commission's conclusion that no other services provided by BOCs should be considered alarm monitoring services under Section 275(e) and grandfathered under Section 275(a)(2). The *NPRM* cites a pair of U S West letters on this issue.[28] In the first, U S West's Executive Director-Federal Regulatory, Mr. Elridge Stafford, explains that U S West provides two "telecommunications transport services to alarm monitoring companies who in turn provide alarm monitoring services to their customers or patrons."[29] In a second letter, however, Dan L. Poole, U S West Corporate Counsel, asserts that both Scan Alert and Versanet are "transport services" used by alarm monitoring companies to monitor residence and business locations for burglary, fire, or life

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[27] *NPRM* at ¶ 70; *See BOC CEI Plan Approval Order*, 10 FCC Rcd at 13770.

[28] *NPRM* at ¶ 70.

[29] *Letter from Elridge A. Stafford, Executive Director-Federal Regulatory, U S West, to Rose Crellin, FCC*, dated May 9, 1996 at 1 ("*First U S West Letter*").

safety events that should be categorized as alarm monitoring services under Section 275(e).[30] Neither of these services, "Scan Alert" and "Versanet", comport with the definition of alarm monitoring service under Section 275(e) and neither should be grandfathered under Section 275(a)(2).

As discussed previously, Scan Alert does not comport with the definition of alarm monitoring services, but is merely used by alarm monitoring service companies to provide a component thereof. Accordingly, although the service likely is an enhanced service that should be provided pursuant to a CEI plan or a waiver of the *Computer II* requirements, U S West may continue to provide Scan Alert since it is not an alarm monitoring service, and thus, is not governed by the terms of Section 275. By the same analysis, however, U S West's provision of Scan Alert does not qualify it to claim that it was providing "alarm monitoring service" prior to November 30, 1995.

The same analysis also applies to U S West's Versanet service, which uses spread spectrum technology to perform the same scanning and routing functions as Scan Alert. As discussed previously with regard to Ameritech's ScanAlert service (which also uses spread spectrum technology), the use of spread spectrum technology simply does not affect whether the service constitutes alarm monitoring service under the definition set forth in Section 275(e). Like other transmission services, Versanet is merely a component of, and does not

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[30] *Letter from Dan L. Poole, Corporate Counsel, U S West, to Lisa Sockett, FCC*, dated May 16, 1996 at 1 ("*Second U S West Letter*").

by itself, constitute alarm monitoring service as defined in the Act. Thus, U S West's offering of Versanet is unaffected by the provisions of Section 275, and does not provide a basis for including U S West as a "grandfathered" provider of alarm monitoring services.

C. The Commission Should Establish Rules to Determine When A BOC or Other LEC is "Engag[ing] in the Provision of Alarm Monitoring Services" Subject to the 1996 Act (¶ 71)

AICC applauds the Commission's efforts to determine what constitutes "engag[ing] in the provision of alarm monitoring services".[31] AICC currently is involved in several other proceedings as a direct result of the BOC's attempts to minimize the effect of Section 275.

Initially, AICC supports the Commission's tentative conclusion that the resale of alarm monitoring service constitutes the provision of such service.[32] Any other conclusion simply eviscerates the statute. AICC also submits that, among other things, "billing and collection, sales agency, marketing, and/or various compensation arrangements" collectively constitute the provision of alarm monitoring service and that individually any one of these activities could constitute the provision of alarm monitoring services.[33]

In enacting Section 275, Congress intended to eradicate any incentives a BOC might have to discriminate against alarm monitoring providers by participating in the success of one

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[31] 47 U.S.C. § 275(a)(1).

[32] NPRM at ¶ 71.

[33] *Id.*

alarm monitoring company (including its own) over another. AICC believes the statute clearly prohibits activities which give the BOCs this incentive. Nevertheless, to protect the statutory purpose form being whittled away by the BOCs' constant manipulations, the Commission needs to establish simple rules for detection and enforcement of Section 275. Thus, the first and primary rule should be that:

> Compensation arrangements, charges and fees for services provided to alarm monitoring service providers may not be dependent on the success of the alarm monitoring entity.

Accordingly, if there is any economic incentive for a BOC to favor one alarm monitoring service provider over another, the Commission should construe the activity to be tantamount to engaging in the provision of alarm monitoring services.

Based on this premise, several bright line prohibitions should be established. BOCs with agreements to conduct the following activities should be deemed to be engaging in the unauthorized provision of alarm monitoring service if they involve:

(1) resale of alarm monitoring service;
(2) sales agency on behalf of an alarm monitoring service provider;
(3) marketing on behalf of or in conjunction with an alarm monitoring service provider; or
(4) revenue sharing with an alarm monitoring service provider, including any form of compensation based on a percentage of revenue or a per customer commission.

Moreover, BOCs should be flatly prohibited from holding themselves out as alarm monitoring service providers or creating confusion as to whom is providing the actual alarm monitoring service.